

BEFORE THE DOCKET FILE COPY ORIGINAL  
Federal Communications Commission  
WASHINGTON, D.C.

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In the Matter of )  
 )  
Implementation of the )  
Telecommunications Act of 1996 )  
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Amendment of the Rules Governing )  
Procedures to Be Followed When )  
Formal Complaints Are Filed )  
Against Common Carriers )  
 )  
Accelerated Docket for )  
Complaint Proceedings )

JAN 12 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CC Docket No. 96-238

**COMMENTS OF TELIGENT, INC.**

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January 12, 1998

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**COMMENTS OF TELIGENT, INC.**

Teligent, Inc. ("Teligent")<sup>1</sup> hereby submits its Comments in the above-captioned proceeding.<sup>2</sup>

**1. NEED FOR ACCELERATED DOCKET.**

Teligent believes it desirable for the Commission to adopt a regulatory enforcement approach that assures prompt resolution of outstanding issues. The Telecommunications Act of 1996 envisions competition among an increased number of telecommunications carriers. Inevitably, the necessary interactions among and

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<sup>1</sup> Teligent was formerly known as Associated Communications, L.L.C.

<sup>2</sup> Common Carrier Bureau Seeks Comment Regarding Accelerated Docket For Complaint Proceedings, CC Docket No. 96-238, Public Notice, DA 97-2178 (rel. Dec. 12, 1997) ("Notice").

between incumbent and competitive carriers will result in disputes, many of them resulting in allegations of anticompetitive conduct. An accelerated method of resolving complaints before the Commission will reduce unproductive friction and advance consumer welfare otherwise inherent in a competitive environment. The accelerated process will realize the "[p]rompt and effective enforcement of the Act and the Commission's rules [which] is crucial to attaining the 1996 Act's goals of full and fair competition in all telecommunications markets."<sup>3</sup>

In light of the benefits offered by an accelerated complaint resolution process, it is imperative that the Commission not limit unduly those disputes which may be presented to it for expedited resolution. The competitive environment can be affected in a myriad of ways. If the Commission limits the Accelerated Docket to issues of telecommunications competition as it suggests in the Notice,<sup>4</sup> it should consider the defined category from a broad perspective.

For example, Teligent has encountered, and expects to continue to encounter, resistance to obtaining access to building

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<sup>3</sup> Implementation of the Telecommunications Act of 1996; Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are filed Against Common Carriers, CC Docket No. 96-238, Report and Order, FCC 97-396 at ¶ 1 (rel. Nov. 25, 1997) ("Report and Order").

<sup>4</sup> See Notice at 3.

inside wiring and the placement of its facilities on building rooftops. The substantial number of buildings in which controversies may arise suggests the application of bright line rules to facilitate dispute resolution.<sup>5</sup> In conjunction with such bright line rules, the Commission should allow for accelerated dispute resolution as well as aggregation within one docket of disputes with similar factual scenarios, as is likely to be the case for inside wiring and rooftop access complaints.

Moreover, disputes with local governments concerning franchise requirements, franchise fees, and zoning issues are arising across the nation. Resolution of these disputes has proven to be a time-intensive process. For example, TCI's dispute with the City of Troy, Michigan remained unresolved for over a year.<sup>6</sup> Prompt dispute resolution will enhance the Commission's ability to meaningfully address the relevant issues so that the development of competition may continue. In addition, an accelerated process would reduce the costs associated with dispute resolution otherwise borne by local

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<sup>5</sup> See Implementation of Section 703(e) of the Telecommunications Act of 1996; Amendment of the Commission's Rules and Policies Governing Pole Attachments, CS Docket No. 97-151, *Comments of Teligent, L.L.C.* at 5-6 and n.17 (filed Oct. 21, 1997) (recommending bright line rules for access to rights-of-way through buildings and the possible use of the Commission's ADR procedures for resolving right-of-way access disputes).

<sup>6</sup> See TCI Cablevision of Oakland County, Inc. Petition for Declaratory Ruling and Other Relief Pursuant to 47 U.S.C. §§ 541, 544(e), and 253, CSR 4790, *Memorandum Opinion and Order*, FCC 97-331 (rel. Sep. 19, 1997).

governments and carriers. Although the Commission contemplates use of the accelerated docket for complaints against common carriers, the process is also suitable for resolving disputes between carriers and local governments.

## **2. MINITRIALS.**

Certain advantages derive from the oral process of a minitrial. Minitrials of complaints will provide a direct and efficient means of gathering information and obtaining candid answers to outstanding questions: unresponsive answers are challenged at once; follow-up questions are to be asked immediately; and discerning the essence of a conflict and the credibility of a witness is facilitated. The written environment does not offer these attributes with equal effectiveness.

Moreover, the hearing process offers the benefit of timeliness. The written process involves time for pleading preparation, pleading review, reply preparation, and Commission consideration and can proceed for several weeks. By contrast, the minitrial process can accomplish a similar function within a period of days. The Commission should strive to complete a minitrial hearing within a strictly enforced time period, and should complete the process no later than 45 days following the date on which the complaint is filed.<sup>7</sup>

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<sup>7</sup> See Notice at 3 (suggesting conducting a hearing no later than 45 days after the filing of the complaint).

### 3. DISCOVERY.

Focused discovery mechanisms will streamline the complaint process while enhancing its effectiveness. The expense and burden of discovery strains the resources of new entrants whose employees are engaged in tasks relating to the deployment of new competitive services. The expense and burden of litigating discriminatory or other unlawful practices partially explains why new entrants frequently tolerate suboptimal conditions in their efforts to enter new markets. A streamlined discovery process will facilitate dispute resolution and enable carriers to obtain the market conditions that Congress envisioned in the 1996 Act.<sup>8</sup>

To minimize the expense and burden of discovery, the Commission should refrain from requiring parties to exchange all documents prior to a production request being made.<sup>9</sup> The potential time savings generated by the Commission's proposals are outweighed by the substantial burdens of large and wasteful document production. Moreover, as the Commission noted in the Report and Order, as part of the pre-complaint settlement negotiations, it is reasonable to expect that "parties will

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<sup>8</sup> As the Commission noted, "[d]iscovery is inherently time-consuming and often fails to yield information that aids in the resolution of a complaint." Report and Order at ¶ 101.

<sup>9</sup> See Notice at 4 (seeking comment on whether parties should be required to exchange all relevant documents when they file their initial pleadings, or at some other time and seeking comment on the relationship between the documents produced and the claims and defenses raised in the proceeding).

exchange relevant documentation to the extent that it would help to resolve conflicts."<sup>10</sup> Relevant documents still in need of production after this stage are most efficiently obtained through specific and timely requests.

#### **4. PRE-FILING PROCEDURES.**

Teligent recognizes the benefits of pre-complaint settlement discussions under the auspices of the Task Force: the potential for amicable settlement of disputes; the clarification of outstanding issues; and the promotion of administrative efficiency. Indeed, Teligent would prefer settlement of disputes in this swift and inexpensive manner. However, a requirement that parties undertake formal settlement discussions prior to filing a complaint should be waived in instances of repeated actions of a similar nature. For example, once an incumbent LEC's refusal to permit access to inside wiring in a building has been litigated, subsequent similar refusals to grant access to other buildings should not require the commencement of settlement negotiations for each subsequent building. Once a clear pattern of a carrier's noncompliance with a rule has been established in similar circumstances, the Commission should consider reasonable a complainant's failure to conduct settlement negotiations for subsequent disputes. Otherwise, the pre-complaint settlement discussion requirement could be used in an anticompetitive manner to delay inevitable litigation before the Commission.

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<sup>10</sup> Report and Order at ¶ 122.

## CONCLUSION

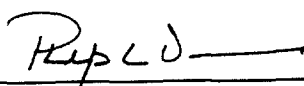
For the foregoing reasons, Teligent respectfully requests the Commission to adopt an accelerated complaint resolution process consistent with the recommendations contained herein.

Respectfully submitted,

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